KERR-McGEE CORP.

IBLA 85-797 Decided August 9, 1988

Appeal from a decision of the Minerals Management Service denying alleged offset against future royalty obligations. MMS 85-0115-OCS.

Affirmed.

1. Outer Continental Shelf Lands Act: Refunds

> A person claiming a refund of excessive royalty payments must file a request within 2 years of the date payments were made. It is not permissible for a refund claimant to circumvent the refund procedures prescribed by Congress in sec. 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. | 1339 (1982), by "offsetting" prior alleged overpayments against future payment obligations.

APPEARANCES: Roger G. Addison, Esq., Oklahoma City, Oklahoma, for appellant; Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

By letter dated January 13, 1978, to the Geological Survey, Kerr-McGee (appellant) requested reimbursement of $25,429.91 representing the royalty portion of refunds it was required by the Federal Power Commission to make to purchasers of natural gas produced from 13 Outer Continental Shelf leases between April 4, 1961, to December 31, 1970. In the month following its letter, appellant deducted the amount for which it had requested reimbursement from the royalties reported on its Lessee's Monthly Report of Sales and Royalty, Outer Continental Shelf Operations, dated February 28, 1978.

Pursuant to section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C | 1339 (1982), the Secretary of the Interior is authorized to approve refund requests for excess payments made to the United States. One of the provisions of section 10 is that a request for repayment be filed "within two years after the making of the payment." In a recent decision we reaffirmed that, because of this express condition imposed by Congress, the Secretary was without authority to grant any refund request that was not filed within the relevant 2-year period. Shell Offshore, Inc., 96 IBLA 149, 94 I.D. 69 (1987).

Appellant characterizes its February 1978 action as a proper "offset" of prior overpayments against future payment obligations. By decision dated May 30, 1985, the Director, Minerals Management Service (MMS), ruled that Kerr-McGee's "offset" was improper and ordered the company to remit $24,429.91, 1/ plus interest from January 31, 1978. This appeal followed. For the reasons set forth below, we affirm the Director's decision.

[1] Appellant cites two prior Board decisions as indicative that it is permissible to offset former overpayments against future payments. However, the cases cited by appellant are distinguishable from what it seeks to have approved here. The cases cited, Shell Oil Co., 52 IBLA 74 (1981), and Mobil Oil Co., 65 IBLA 295 (1982), involved audits conducted by the Department in which an oil company's under- and over-reporting of royalties was discovered. In each case, the Board was careful to point out that refund requests for excessive payments are a different category of royalty management. Thus, in Shell Oil Co., the Board said: "Had Shell initiated a request in 1979 for a refund of its November 1974 overpayment, we believe [Geological] Survey would have been correct in denying such request as untimely." 52 IBLA at 78. In Mobil Oil Co., the appellant, citing to the Board's approval of offsetting in its Shell Oil opinion, submitted that, so long as production continues on a lease, "the overpayment of royalties has consistently been, and should continue to be, treated as prepayment of future royalties." 65 IBLA at 305. The Board rejected this argument:

> With respect to refunds, repayments, or credits, the 2-year period in the statute applies and Shell Oil Co., supra, cannot be construed to circumvent its application. The purpose of the 2-year limit is to urge lessees to verify their accounts promptly and ascertain the correctness of payments within the time provided.

(65 IBLA at 304).

In making the distinction between reporting errors discovered during audits and the refund provisions of OCSLA, the Board's Mobil Oil decision clarified the proper use of the term "offsetting." Agreeing with Solicitor's Opinion M-36942, Refunds and Credits under the Outer Continental Shelf Lands Act, 88 I.D. 1090 (1981), the Board observed that offsetting is the crediting of overpayments against past payments due and that "offsetting has nothing to do with refunds and is permissible within the auditing period, whether or not that period is within 2 years of the date of the audit." OCSLA's reference to crediting, as in section 10(b) ("refund of or credit for such excess payment") refers, on the other hand, to credits "against future payments due and is governed by the 2 year limitation in the statute just as refunds and repayments are." 65 IBLA at 303.

The above precedent makes it clear that appellant in this case was not engaged in a proper offset, as that term is recognized by the Department. Instead, having filed a late refund request with the Secretary, appellant

1/ Appellant and MMS agree on appeal that this figure is a typographical error and that the correct amount is $25,429.91.

simply reduced the royalties it paid in the following month by the amount it wished reimbursed. If this procedure were countenanced, we would thwart the will of Congress, which has expressly provided how refunds for overpayments are to be processed. The Secretary of the Interior, not the individual claimant, is empowered to pass judgment on refund requests and only requests which are timely filed are entitled to be approved. 2/

Therefore, pursuant to the authority delegated to the Board of Land of Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

2/ Appellant submits that it has been disadvantaged by the lapse of time occurring between its offset claim and MMS' objection thereto some 7 years later. Several responses are appropriate. First, the purported offset was itself submitted many years after the pertinent events. The offset was claimed in February 1978 on the basis of royalty payments made between 1961 through 1970. Second, as previously explained, appellant's attempt to obtain credit for prior overpayments through an accounting and reporting measure it terms an offset cannot disguise the fact that it was merely acting on its own refund request previously filed with the Department. Because the refund request was untimely filed, the Secretary was without authority to approve it. Appellant therefore knew or should have known in 1978 when it claimed a refund, followed by its "offset," that it could not recoup the alleged overpayments at issue. In any event, the doctrine of laches cannot be invoked against the Government to accord a benefit not otherwise authorized by law. See 43 CFR 1810.3; Viking Resources Corp., 80 IBLA 245 (1984).